IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

WEDNESDAY, THE 18TH JULY 2007 / 27TH ASHADHA 1929

WP(C).No. 7362 of 2007(B)

PETITIONER:

M/S.MALABAR CRUMB RUBBER FACTORY,
REP. BY ITS MANAGING DIRECTOR,
KUPPAYAKODE P.O., KOZHIKODE.

BY ADV. SRI.T.G.RAJENDRAN

RESPONDENTS:

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1. THE STATE FARMING CORPORATION OF KERALA LTD., REPRESENTED BY ITS MANAGING DIRECTOR, FARM HOUSE, P.B.NO.13, NELLIPPALLY P.O., PUNALUR, KOLLAM.

2. THE SPECIAL DEPUTY TAHSILDAR, ARREARS COLLECTION, KOZHIKODE.

3. STATE OF KERALA, REPRESENTED BY THE SECRETARY, DEPARTMENT OF AGRICULTURE, SECRETARIAT, THIRUVANANTHAPURAM.

BY ADV. SHRI. P.N.SANTHOSH, GOVERNMENT PLEADER
SRI.K.SASIKUMAR – FOR R1
SRI.AJITH KRISHNAN,SC,STATE FARMING COR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) No. 7362/2007

APPENDIX

PETITIONER'S EXHIBITS

P1 : COPY OF THE AGREEMENT DATED 10/04/1997.

P2 : COPY OF THE LETTER NO.MCRF/ORT/97-98 DATED 06/11/97.

P3 : COPY OF THE LETTER MCRF/PRT/3 DATED 08/12/1997.

P4 : COPY OF THE LETTER NO.MCRF/PRT/3/ DATED 16/01/98.

P5 : COPY OF THE LETTER NO.MCRF/PRT/97-98 DATED 03/02/1998.

P6 : COPY OF THE NOTICE SENT BY THE 1ST RESPONDENT DATED 06/07/2000.

P7 : COPY OF THE LETTER NO.RMS/PRT/2/2000-01 DATED 02/12/2000.

P8 : COPY OF THE REPRESENTATION FILED BEFORE THE HON'BLE MINISTER.

P9 : COPY OF THE NOTICE SENT by the 2ND RESPONDENT DATED 05/06/2002.

P10 : COPY OF THE JUDGMENT IN OP 5094/03 OF THE HON'BLE HIGH COURT.

P11(A) : COPY OF THE REVENUE RECOVERY NOTICE DATED 24/01/2007.

P11(B) : COPY OF THE REVENUE RECOVERY NOTICE.

RESPONDENT'S EXHIBITS

R1(a) : COPY OF THE TENDER NOTIFICATION NO. SFCK/CRUMB/SCRAP/1996-97 DATED 30/01/1997.

// TRUE COPY //

PA TO JUDGE.

jg

C.N.RAMACHANDRAN NAIR, J.

WP(C) No. 7362 of 2007

Dated, this the 18th day of July, 2007

J U D G M E N T

Petitioner is challenging recovery proceedings, for recovery of loss sustained by 1st respondent, consequent upon petitioner's failure to lift the quantity of rubber purchased from 1st respondent. First respondent sold 500 MT of rubber and petitioner purchased the same vide Ext.P1 agreement dated 10/04/1997. Though petitioner was bound to lift the entire quantity of 500 MTs in 45 days from the date of agreement, petitioner applied for extension of time and the 1st respondent granted 159 days to lift the material. However, petitioner lifted only 356.7 MTs. and the balance 143.3 Mts. were abandoned by the petitioner. Ext. R1(a), which forms part of the contract, provides in Clause (10) that if the petitioner fails to lift the full quantity, balance goods will be sold at the risk and cost of the petitioner. The amount now demanded after resale of the item is differential price of Rs.13,85,852/-, along with ground rent of Rs.1,26,820/- and advertisement charges of Rs.20,020/-. Petitioner's case is that no recovery could be made for breach of contract without filing suit and obtaining decree. According to the

petitioner, in fact, 1st respondent issued suit notice vide Ext.P6 but did not pursue it. Therefore, recovery is not permissible is the case of the petitioner. However, 1st respondent has filed counter affidavit stating that the damage is determined strictly in accordance with purchase order and petitioner has no case to the contrary. Moreover, petitioner himself has produced documents, namely Exts.P2 to P5, which show that petitioner did not lift the material because of the sharp decline in price of the goods. Petitioner's contention, that recovery cannot be made without obtaining court decree, is not correct, because Clause (10) of sale condition, produced as Ext.R1(a), itself provides as to what is the amount payable on account of breach. Petitioner has no case that the 1st respondent did not make resale in proper manner. Petitioner apprehended heavy loss and that is reason for breach of contract is admitted and is evident from Exts.P2 to P5. Therefore petitioner's contention that suit has to be filed to settle dispute lacks any merit and since damages demanded is strictly in terms of purchase order, the demand has to be only upheld and I do so. However, since it is a 10 year old matter and since market variations of the magnitude was unexpected, I feel, petitioner can

be granted reduction on equitable grounds, provided, petitioner clears the amount re-fixed by this Court within a reasonable time without contest. Accordingly, this writ petition is disposed of reducing the liability to Rs. 6.5 lakhs, i.e. 60% of the differential price. Petitioner is granted two equal monthly instalments to clear the above amount, first of which will be paid on or before 15/09/2007 and balance on or before 15/10/2007. It is unjust to recover the ground rent and advertisement charges. If petitioner makes payment of 1st instalment and produces receipt of the same before the 2nd respondent, recovery proceedings will be kept pending till 15/10/2007 and on production of receipt of 2nd instalment paid on or before 15/10/2007, 2nd respondent will close RR proceedings. However, if petitioner does not make payment as above, then the reduction granted will stand automatically vacated and on first default respondents can proceed for recovering entire arrears.

This writ petition is disposed of as above.

(C.N.RAMACHANDRAN NAIR, JUDGE)

jg